



IT IS ORDERED

Date Entered on Docket: November 9, 2017

The Honorable Robert H Jacobvitz
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW MEXICO

In re:

Phillip Rael and
Anna Rael,

Debtor.

No. 17-12289-j7

**DEFAULT ORDER GRANTING TD Auto Finance LLC RELIEF
FROM THE AUTOMATIC STAY**

This matter came before the Court on the Motion for Relief from Stay, filed on October 12, 2017 Docket No. 26 ("the motion") by TD Auto Finance LLC ("Movant"). The Court, having reviewed the record and the Motion, and being otherwise sufficiently informed,

FINDS:

(a) On October 12, 2017, Movant served the Motion and a notice of the Motion (the “Notice”) on counsel of record for the Debtor and the case trustee (the “Trustee”) by use of the Court’s case management and electronic filing system for the transmission of notices, as authorized by Fed.R.Civ.P. 5(b)(3) and NM LBR 9036-1, and on the Debtor by United States first class mail, in accordance with Bankruptcy Rules 7004 and 9014.

(b) The Motion relates to the following personal property:

2016 Chevrolet Silverado 1500

VIN # 3GCUKREC8GG255102

(the “Collateral”).

(c) The Notice specified an objection deadline of 21 days from the date of service of the Notice, to which three days was added under Bankruptcy Rule 9006(f);

(d) The Notice was sufficient in form and content;

(e) The objection deadline expired on November 2, 2017;

(f) As of November 7, 2017, neither the Debtor nor the Trustee, nor any other party in interest, filed an objection to the Motion;

(g) The Motion is well taken and should be granted as provided herein;
and

(h) By submitting this Order to the Court for entry, the undersigned counsel for Movant certifies under penalty of perjury that, on September 20, 2017, Meghann Kelsheimer searched the data banks of the Department of Defense Manpower Data Center (“DMDC”), and found that the DMDC does not possess any information indicating that the Debtor is currently on active military duty of the United States.

IT IS THEREFORE ORDERED:

1. The automatic stay pursuant to 11 U.S.C. § 362 is hereby modified to allow Movant to enforce all of its contract, state law, and/or other rights against the Collateral.

2. The automatic stay is modified to permit the Movant, to the extent permitted by applicable non-bankruptcy law, to repossess the Collateral and otherwise enforce all its rights with regard to the Collateral, including any rights to sell the Collateral by judicial or non-judicial means and apply the proceeds therefrom to the obligation owed to Movant by the Debtor, and doing whatever else may be necessary to preserve and conserve the Collateral. The automatic stay is further modified to the same extent in favor of all other persons claiming a lien against the Collateral.

3. The automatic stay is not modified to permit any act to collect any deficiency or other obligation as a personal liability of the Debtor, although the Debtor can be named as a defendant in litigation to obtain an *in rem* judgment or to repossess the Collateral in accordance with applicable non-bankruptcy law.

4. This Order does not waive Movant's claim against the bankruptcy estate for any deficiency owed by the Debtor after disposition of the Collateral. Movant may file an amended proof of claim in this bankruptcy case within 30 days after a foreclosure sale of the Property, should it claim that Debtor owes any amount after the sale of the Collateral.

5. This Order shall continue in full force and effect if this case is dismissed or converted to a case under another chapter of the Bankruptcy Code.

XXX END OF ORDER XXX

Submitted by:

By/s/ James E. Shively #9497
James E. Shively
Ball, Santin & McLeran, PLC
2999 N. 44th Street, Suite 500
Phoenix, Arizona 85018
Telephone: 505-243-1887
Attorney for TD Auto Finance LLC

Copies to:

Phillip Rael and
Anna Rael
7 Pony Express
Edgewood, NM 87015
Debtor

Yvette J. Gonzales
P.O. Box 1037
Placitas, NM 87043
Trustee

/s/ Erin O'Brien